

SUPREME COURT OF INDIA

Commissioner of Central Excise, Bangalore

Vs.

Mazagon Dock Limited

C.A.No.3429 of 2000

(S. N. Variava and Dr. AR. Lakshmanan JJ.)

28.07.2005

JUDGMENT

S. N. Variava, J.

1. This Appeal is against the Judgment of Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT). Briefly stated the facts are as follows:

“The Respondents have a Ship building yard. It would appear that they had entered into contract with ONGC for manufacture and supply of jack-up rigs. The price shown in the contract was the sum of Rs. 41.80 crores per rig. The Respondents have filed a price list dated 29th March, 1988 which shows the price of one rig to be Rs. 45, 88, 55, 418.00, the difference being due to fluctuation in foreign exchange rate. This price list was approved on 15th April, 1988. The Respondents were also regularly filing RT-12 form. The Respondents said the excise duty on rig taking the value of rig at Rs. 45, 88, 55, 418/-.”

2. On 15th March, 1990, they were issued show cause notice inter alia alleging suppression of the actual price of rigs for purposes of excise duty. It was claimed that over and above the price shown in the contract, the Respondents were also entitled, as per the policy of the Government, to receive a subsidy of 20% from Government and 10% from ONGC. It was claimed that this 30% formed part of the price and excise duty was payable thereon. The contentions of the Respondents that they had already included 10% (received from ONGC), as well as their contentions that 20% price received from the Government were not included, were not accepted. By an order dated 29th of November, 1991, they were directed to pay the differential duty as well as penalty. By the said order the contention regarding the limitation was also rejected.

3. The Respondents carried the matter in Appeal to the Tribunal. The Tribunal has by the impugned judgment held that 30% subsidy cannot and does not form part of the price. The Tribunal has also relied on a judgment of this Court in the case of *Collector of Central Excise, Baroda v. Cotspun Ltd. reported in¹* and held that the differential duty could not be

claimed after a lapse of two years. By the impugned order the Tribunal has rejected the additional plea raised by the Respondents that no excise duty was payable on the goods as the rigs were exported out of India. The Respondents have not come in Appeal against this part of the Order. Hence this finding stands concluded.

4. The first question for consideration is whether 30% subsidy i.e. 20% from the Government and 10% from the ONGC is includable in the price of the goods for purposes of excise duty.

5. The relevant portion of Section 4 as it then stood read as follows:

"SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of this section, be deemed to be –

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale."

6. Rule 5 then in force read as follows:

RULE 5. Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except that the price is not the sole consideration, the value of such goods shall be based on the aggregate of such price and the amount of the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

7. Thus under Section 4 read with Rule 5 in cases like the present where price was not the sole consideration the amount in money value of any additional consideration is includable in the value. However, the additional consideration must be directly or indirectly from the buyer to the assessee. In this case it is to be seen that the subsidy was as per the policy of the Government. The subsidy of 20% was paid by the Government 10% was paid by the buyer. In our view the subsidy of 20% from the Government cannot be said to be additional consideration as it is not received from the buyer either directly or indirectly. Therefore, that would not be includable in the price of the goods for the purposes of excise. However, it is an admitted position that 10% subsidy was received by the Respondent from the buyer. It is therefore additional consideration received by the Respondent from the buyer. The fact that it is received under a policy of the Government does not detract from the above position. It is therefore includable. The judgment of the Tribunal holding that the entire subsidy (including the 10%) is not includable, is not correct and is set aside.

8. The Respondents have contended that 10% subsidy was included in the price. The Appellants deny this. The Tribunal has not looked into this aspect at all. We find that there is also contention regarding limitation. Apart from referring to the Cotspun judgment the

Tribunal has not satisfactorily dealt with the aspect of limitation. The Tribunal has not considered the fact that since Cotspun judgment in Section 11A has been amended. Thereafter the judgments of this Court in the cases of Dugar Electronics v. Collector of Central Excise, Calcutta reported in 3 (referred) and *ITW Singode India Ltd. v. Collector of Central Excise reported in*² (referred) have explained Cotspun judgment. In our view this aspect must also be re-examined by the Tribunal.

9. We, therefore, set aside the impugned Judgment and remit the matter back to the Tribunal for examination of these two aspects only.

10. The Appeal stands disposed of accordingly. No order as to costs.

¹1999 (113) ELT 353

²2004 (3) SCC 48